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DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 298

[Docket Number MARAD-2014-0011]

Final Action Regarding “Other Relevant Criteria” for Consideration When Evaluating the Economic Soundness of Title XI Maritime Loan Guarantee Program Applications

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final policy.

SUMMARY: This document serves to inform interested parties and the public of the Maritime Administration’s (MARAD) final policy regarding the factors MARAD will consider as “Other Relevant Criteria” in its review of the economic soundness of applications under the Title XI Loan Guarantee Program [also known as “Title XI” or the Federal Ship Financing Program (FSFP)]. On February 24, 2014, MARAD published a Notice of Proposed Policy (NPP) and sought comments relating to the agency’s evaluation of Title XI Maritime Loan Guarantee applications. In this document MARAD: Responds to comments received during the public notice; clarifies and reinforces that applicants with projects to construct or reconstruct vessels to use alternative energies, or to meet current or future U.S. or international environmental and safety standards, are eligible and encouraged to apply for FSFP loan guarantees; and implements the final policy.

DATES: This policy is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL

REGISTER].

FOR FURTHER INFORMATION CONTACT: Owen Doherty, Associate Administrator for Business and Finance Development, Maritime Administration, Telephone: 202-366-1883; Email: *owen.doherty@dot.gov*; Mail: MARAD, 1200 New Jersey Avenue, SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

A. Introduction

In order to be eligible for a FSFP loan guarantee an obligation must, among other things, aid the financing of the “construction, reconstruction, or reconditioning of a vessel.”

46 U.S.C. 53706. The terms construction, reconstruction and reconditioning are broadly defined to include “designing, inspecting, outfitting, and equipping.” 46 U.S.C. 53701(3).

Chapter 537 of Title 46 of the United States Code, as implemented by part 298 of title 46 of the Code of Federal Regulations (CFR), details the factors MARAD must consider in processing FSFP loan guarantee applications. The factors include economic soundness, project feasibility and specifically enumerated priorities. For the economic soundness determination, 46 U.S.C. 53708(a) provides six mandatory factors MARAD must consider, but allows consideration of “other relevant criteria” as well. The accompanying regulation, 46 CFR 298.14(b), also provides that MARAD may take into account “other relevant criteria.” Sections 53708(a) and (b) explicitly provide “the need for technical improvements, including increased fuel efficiency or improved safety” as matters the Administrator and Secretary must consider with regard to applications for vessels intended for use on inland waterways and for fishing vessels, respectively.

On February 24, 2014, MARAD published a Notice of Proposed Policy (79 FR 10075) in which it proposed to consider “various environmental initiatives that are likely to increase

efficiency and lead to future cost savings as ‘other relevant criteria’ in evaluation of [the economic soundness of] Title XI loan guarantee applications.” A non-exclusive list of such initiatives are alternative fuel systems designs, fuel cells, hybrid propulsion systems, air emissions reduction technologies and ballast water treatment technologies.

The policy provides that, “demand for environmentally friendly designs, fuel and technologies is growing rapidly throughout the maritime industry because, among other things, they meet new air emissions and other discharge standards , and present the potential for greater efficiency and cost savings.” The proposed policy also stated, “. . . that many of the economic benefits of environmentally friendly designs, fuels and technologies take the form of public benefits.” Many of these public benefits cannot be captured by vessel owners and operators using traditional economic metrics, but are valuable nonetheless, because they contribute to environmental sustainability and human health. MARAD sought public comment on the NPP.

In this final policy, MARAD is responding to the comments received, announcing that it intends to clarify and implement the policy as proposed in the prior notice, and clarifying that applicants with projects to construct or reconstruct vessels to be powered by alternative energies, or to meet U.S. or international environmental standards as required for continued operations, are eligible and encouraged to apply for FSFP loan guarantees.

The comments received varied in the degree to which they directly addressed the substantive provisions in the policy. Some commenters expressed agreement with the general principle of considering environmental factors in the review of applications for FSFP loan guarantees. The majority disagreed with the proposal to include environmental considerations as a factor used to determine the economic soundness of projects.

B. Comments

MARAD received a total of 11 comments in response to the policy. Nine commenters disagreed with the proposal to include environmental considerations as “other relevant criteria” in the economic soundness analysis. MARAD received three comments indicating general support for including environmental considerations when evaluating FSFP applications. One commenter suggested that doing so could help accelerate replacement of an aging U.S.-flag fleet. Another stated that FSFP guarantees should be granted in order to make the new ships as environmentally friendly as possible. However, these commentators did not provide input on specific actions MARAD could take to further those interests. The comments, as submitted to the docket for the policy (Docket No. MARAD-2014-0011-0001) may be accessed via <http://www.regulations.gov>.

While many of the other comments included general support for considering environmental factors at some point when evaluating applications that are otherwise economically sound, none of those commenters supported including such factors in the “economic soundness” analysis required under 46 U.S.C. 53703(b). Many commenters focused on the reference to “public benefits” in the original document. They expressed concern that it would be difficult and expensive for applicants and MARAD to incorporate the public benefits (e.g., human health and lower air emissions) of environmentally friendly technologies into a review of economic soundness, which is based on traditionally quantifiable financial factors. Commenters stated that attempting to address public benefits in the economic soundness analysis would result in additional time and expense, which would be inconsistent with MARAD’s stated desire to streamline the application review process. Other commenters noted that cost savings

from increased efficiency resulting from the use of alternative fuels are already captured in the current economic soundness factors.

MARAD received two comments that suggested that the policy might be interpreted to mean that MARAD does not consider projects to reconstruct or reconstruct vessels to use alternative energies (e.g., from a diesel propulsion system to a liquefied natural gas (LNG) propulsion or a hybrid diesel/LNG propulsion system) to be eligible for FSFP loan guarantees.

Several commenters noted that MARAD is already authorized, under 46 U.S.C. 53706(c), implemented by 46 CFR 298.3(k), to prioritize applications for certain vessels, and that a formal rulemaking to add environmental considerations to that section would be more appropriate than adding such considerations to the economic soundness analysis.

MARAD received three comments that referenced issues beyond the scope of the proposed policy.

C. MARAD Response to Comments

MARAD understands the concerns commenters expressed about potential ramifications of implementing this policy. In response to these concerns, MARAD clarifies the policy as described below. The Department of Transportation and MARAD are committed to supporting the development and implementation of technologies that help the U.S.-flag fleet meet or exceed national and international environmental standards and result in environmental improvements. MARAD is also determined to reduce FSFP application processing times and administrative burdens that potential applicants face.

D. Final Policy

By this document, MARAD announces that it will implement the core of the proposed policy. Under this final policy, in addition to the factors listed in 46 U.S.C. 53708(a)(1)-(4) and

(6), MARAD will consider whether such projects include environmental initiatives that are likely to increase efficiency and lead to future cost savings. As noted by several commenters, cost savings resulting from increased fuel efficiency are captured in the current economic soundness analysis factors – most notably projected revenues and expenses of the vessel(s). This final policy merely states explicitly what MARAD is authorized to do under current law and regulations.

MARAD clarifies that it will not require applicants to quantify the potential public benefits of environmentally friendly designs, fuels and technologies. MARAD encourages applicants to emphasize any public benefits or costs of greenhouse gas or criteria pollutant emissions caused or reduced by vessel(s) to be constructed or reconstructed. MARAD encourages applicants to quantify such public benefits to the extent practicable. Consult the following authorities for guidance for undertaking such calculations: (1) White House Office of Management and Budget, Circular A-94, *Circular A-94 Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs* (October 29, 1992) (<https://www.whitehouse.gov/sites/default/files/omb/assets/a94/a094.pdf>); Interagency Working group on Social Cost of Carbon, United States Government, *Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866* (May 2013; revised November 2013) (<https://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/technical-update-social-cost-of-carbon-for-regulator-impact-analysis.pdf>).

In addition, MARAD considers as part of economic soundness the degree to which applications include the use of such designs, fuels or technologies for: (1) reconstruction of vessels to ensure compliance with current or future environmental and safety operating

standards, or (2) construction of new vessels to replace vessels that would not meet such standards. MARAD encourages applicants to include information in their applications regarding the degree to which the vessel(s) to be constructed or reconstructed meets these components of economic soundness analysis.

Consideration of the impact of environmental and safety standards on the economic soundness of an application is consistent with the factors MARAD is required to review. See, 46 U.S.C. 53708(a)(1) – (3). For example, pursuant to new global standards promulgated by the International Maritime Organization, and enforced in the U.S. by the Environmental Protection Agency, NOx emissions from large “Category 3” vessel engines are required to be substantially reduced by 2020. Implementation of these standards will result in many vessels currently in operation being taken out of service, unless they are converted to reduce emissions. These environmental factors directly impact the need for, and market potential and projected revenues and expenses of, any proposed construction or reconstruction.

Further, MARAD clarifies that projects to reconstruct existing vessels are eligible for Title XI loan guarantees. Reconstruction includes conversion of vessels to LNG or dual-fuel power.

(Authority: 46 U.S.C. 53708)

Dated: April 17, 2015.

By Order of the Maritime Administrator:

Thomas M. Hudson, Jr.,

Acting Secretary, Maritime Administration.

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